

AMENDED IN ASSEMBLY APRIL 18, 2012

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2618

Introduced by Assembly Member Ma

February 24, 2012

~~An act to amend Section 1812.607 of the Civil Code, relating to auctions.~~
An act to add Section 6092.5 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2618, as amended, Ma. ~~Auctions: transaction records. Sales and use taxes: auction: vehicles.~~

The Sales and Use Tax Law presumes that all proceeds from retail sales are subject to tax until the contrary is established. The burden of proving a sale of tangible personal property is not a retail sale subject to tax is on the seller unless the seller takes a resale certificate in good faith from a person engaged in the business of selling tangible personal property who holds a permit under that law. Under that law, a person engaged in the business of making retail sales at auction of tangible personal property owned by others is a retailer. That law generally provides that retail sales of vehicles subject to registration under the Vehicle Code are subject to sales tax when sold by a person licensed or certificated under the Vehicle Code and subject to use tax, collected by the Department of Motor Vehicles, when sold by a person not so licensed or certificated. A vehicle not registered under the Vehicle Code, such as a salvage vehicle, is not subject to the special rules for registered vehicles.

This bill would provide that a licensed dismantler that sells specified vehicles, motorhomes, or commercial coaches subject to registration or qualification under the Health and Safety Code or the Vehicle Code, and salvage certificate vehicles, or a person making those sales at auction, is presumed to be making a sale at retail, subject to tax and not a sale for resale. This bill would provide that the seller may rebut this presumption by taking a resale certificate that includes specified information from a licensed dealer, dismantler, automotive repair dealer, or scrap metal processor. This bill would allow a qualified person that does not timely obtain a resale certificate to use alternative methods, prescribed by the State Board of Equalization, to verify the transaction is a valid sale for resale.

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law. Existing law authorizes districts, as specified, to impose transactions and use taxes in accordance with the Transactions and Use Tax Law, which conforms to the Sales and Use Tax Law. Amendments to state sales and use taxes are incorporated into these laws.

This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy.

~~Existing law requires every auction company and auctioneer to keep and maintain complete and correct records and accounts pertaining to the auctioneer's or auction company's activity for a period of no less than 2 years.~~

~~This bill would require every auction company and auctioneer to provide transaction records to the State Board of Equalization when the transaction involves a salvage vehicle and a resale certificate, unless exempted.~~

Vote: ~~majority~~ $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 *SECTION 1. Section 6092.5 is added to the Revenue and*
- 2 *Taxation Code, to read:*

1 6092.5. (a) Every qualified person making any sale of a
2 mobilehome or commercial coach required to be registered
3 annually under the Health and Safety Code, or of a vehicle required
4 to be registered under the Vehicle Code or subject to identification
5 under Division 16.5 (commencing with Section 38000) of the
6 Vehicle Code, or a vehicle that qualifies under the permanent
7 trailer identification plate program pursuant to subdivision (a) of
8 Section 5014.1 of the Vehicle Code, or of any salvage certificate
9 vehicle as defined in Section 11515 of the Vehicle Code, is
10 presumed to be making a sale at retail and not a sale for resale.
11 The presumption may be rebutted by taking a resale certificate
12 from any of the following:

13 (1) A person that certifies it is licensed, registered, regulated,
14 or certificated under the Health and Safety Code or the Vehicle
15 Code as a dealer or dismantler.

16 (2) A person that certifies it is licensed, registered, regulated,
17 or certificated under the Business and Professions Code as an
18 automotive repair dealer, or is qualified as a scrap metal processor
19 as described in the Vehicle Code.

20 (3) A person that certifies it is licensed, registered, regulated,
21 certificated, or otherwise authorized by another state, country, or
22 jurisdiction to do business as a dealer, dismantler, automotive
23 repairer, or scrap metal processor.

24 (b) A qualified person shall not accept a resale certificate from
25 any person except as provided in subdivision (a).

26 (c) (1) In addition to the requirements of Sections 6093 and
27 6243, the certificate shall include the license or registration
28 number of the dealer, dismantler, or automotive repair dealer, as
29 applicable. If the purchaser is not required to hold a seller's permit
30 because the purchaser makes no sales in this state, the purchaser
31 must include on the certificate a sufficient explanation as to the
32 reason the purchaser is not required to hold a California seller's
33 permit in lieu of the seller's permit number. The certificate issued
34 by a purchaser pursuant to this section shall be substantially in
35 such form as the board may prescribe.

36 (2) A qualified person that does not timely obtain a resale
37 certificate as provided in this section may use alternative methods
38 as prescribed by the board to rebut the presumption provided in
39 subdivision (a).

1 (d) *For the purposes of this section, a “qualified person” means*
2 *a person making a sale at auction or a dismantler licensed under*
3 *the Vehicle Code.*

4 SEC. 2. *This act provides for a tax levy within the meaning of*
5 *Article IV of the Constitution and shall go into immediate effect.*

6 SECTION 1. ~~Section 1812.607 of the Civil Code is amended~~
7 ~~to read:~~

8 ~~1812.607. Every auction company and auctioneer shall do all~~
9 ~~of the following:~~

10 ~~(a) Disclose his or her name, trade or business name, telephone~~
11 ~~number, and bond number in all advertising of auctions. A first~~
12 ~~violation of this subdivision is an infraction subject to a fine of~~
13 ~~fifty dollars (\$50); a second violation is subject to a fine of~~
14 ~~seventy-five dollars (\$75); and a third or subsequent violation is~~
15 ~~subject to a fine of one hundred dollars (\$100). This section shall~~
16 ~~not apply to business cards, business stationery, or to any~~
17 ~~advertisement that does not specify an auction date.~~

18 ~~(b) Post a sign, the dimensions of which shall be at least 18~~
19 ~~inches by 24 inches, at the main entrance to each auction, stating~~
20 ~~that the auction is being conducted in compliance with Section~~
21 ~~2328 of the Commercial Code, Section 535 of the Penal Code, and~~
22 ~~the provisions of the California Civil Code. A first violation of~~
23 ~~this subdivision is an infraction subject to a fine of fifty dollars~~
24 ~~(\$50); a second violation is subject to a fine of seventy-five dollars~~
25 ~~(\$75); and a third or subsequent violation is subject to a fine of~~
26 ~~one hundred dollars (\$100).~~

27 ~~(c) Post or distribute to the audience the terms, conditions,~~
28 ~~restrictions, and procedures whereby goods will be sold at the~~
29 ~~auction, and announce any changes to those terms, conditions,~~
30 ~~restrictions, and procedures prior to the beginning of the auction~~
31 ~~sale. A first violation of this subdivision is an infraction subject~~
32 ~~to a fine of fifty dollars (\$50); a second violation is subject to a~~
33 ~~fine of one hundred dollars (\$100); and a third or subsequent~~
34 ~~violation is subject to a fine of two hundred fifty dollars (\$250).~~

35 ~~(d) Notify the Secretary of State of any change in address of~~
36 ~~record within 30 days of the change. A violation of this subdivision~~
37 ~~is an infraction subject to a fine of fifty dollars (\$50).~~

38 ~~(e) Notify the Secretary of State of any change in the officers~~
39 ~~of a corporate license within 30 days of the change. A violation~~

1 of this subdivision is an infraction subject to a fine of fifty dollars
2 (\$50).

3 (f) Notify the Secretary of State of any change in the business
4 or trade name of the auctioneer or auction company within 30 days
5 of the change. A violation of this subdivision is an infraction
6 subject to a fine of fifty dollars (\$50).

7 (g) ~~Keep and maintain, at the auctioneer's or auction company's~~
8 ~~address of record, complete and correct records and accounts~~
9 ~~pertaining to the auctioneer's or auction company's activity for a~~
10 ~~period of not less than two years. The records shall include the~~
11 ~~name and address of the owner or consignor and of any buyer of~~
12 ~~goods at any auction sale engaged in or conducted by the auctioneer~~
13 ~~or auction company, a description of the goods, the terms and~~
14 ~~conditions of the acceptance and sale of the goods, all written~~
15 ~~contracts with owners and consignors, and accounts of all moneys~~
16 ~~received and paid out, whether on the auctioneer's or auction~~
17 ~~company's own behalf or as agent, as a result of those activities.~~
18 ~~A first violation of this subdivision is a misdemeanor subject to a~~
19 ~~fine of five hundred dollars (\$500); and a second or subsequent~~
20 ~~violation is subject to a fine of one thousand dollars (\$1,000).~~

21 (h) ~~Within 30 working days after the sale transaction, provide,~~
22 ~~or cause to be provided, an account to the owner or consignor of~~
23 ~~all goods that are the subject of an auction engaged in or conducted~~
24 ~~by the auctioneer or auction company. A first violation of this~~
25 ~~subdivision is a misdemeanor subject to a fine of five hundred~~
26 ~~dollars (\$500); and a second or subsequent violation is subject to~~
27 ~~a fine of one thousand dollars (\$1,000).~~

28 (i) ~~Within 30 working days after a sale transaction of goods,~~
29 ~~pay or cause to be paid all moneys and proceeds due to the owner~~
30 ~~or the consignor of all goods that were the subject of an auction~~
31 ~~engaged in or conducted by the auctioneer or auction company,~~
32 ~~unless delay is compelled by legal proceedings or the inability of~~
33 ~~the auctioneer or auction company, through no fault of his or her~~
34 ~~own, to transfer title to the goods or to comply with any provision~~
35 ~~of this chapter, the Commercial Code, or the Code of Civil~~
36 ~~Procedure, or with any other applicable provision of law. A first~~
37 ~~violation of this subdivision is a misdemeanor subject to a fine of~~
38 ~~one thousand dollars (\$1,000); a second violation is subject to a~~
39 ~~fine of one thousand five hundred dollars (\$1,500); and a third or~~

1 subsequent violation is subject to a fine of two thousand dollars
2 (\$2,000).

3 (j) ~~Maintain the funds of all owners, consignors, buyers, and~~
4 ~~other clients and customers separate from his or her personal funds~~
5 ~~and accounts. A violation of this subdivision is an infraction subject~~
6 ~~to a fine of two hundred fifty dollars (\$250).~~

7 (k) ~~Immediately prior to offering any item for sale, disclose to~~
8 ~~the audience the existence and amount of any liens or other~~
9 ~~encumbrances on the item, unless the item is sold as free and clear.~~
10 ~~For the purposes of this subdivision, an item is “free and clear” if~~
11 ~~all liens and encumbrances on the item are to be paid prior to the~~
12 ~~transfer of title. A violation of this subdivision is an infraction~~
13 ~~subject to a fine of two hundred fifty dollars (\$250) in addition to~~
14 ~~the requirement that the buyer be refunded, upon demand, the~~
15 ~~amount paid for any item that is the subject of the violation.~~

16 (l) ~~Within two working days after an auction sale, return the~~
17 ~~blank check or deposit of each buyer who purchased no goods at~~
18 ~~the sale. A first violation of this subdivision is an infraction subject~~
19 ~~to a fine of one hundred dollars (\$100); and a second or subsequent~~
20 ~~violation is subject to a fine of two hundred fifty dollars (\$250).~~

21 (m) ~~Within 30 working days of any auction sale, refund that~~
22 ~~portion of the deposit of each buyer that exceeds the cost of the~~
23 ~~goods purchased, unless delay is compelled by legal proceedings~~
24 ~~or the inability of the auctioneer or auction company, through no~~
25 ~~fault of his or her own, to transfer title to the goods or to comply~~
26 ~~with any provision of this chapter, the Commercial Code, or the~~
27 ~~Code of Civil Procedure, or with other applicable provisions of~~
28 ~~law, or unless the buyer violated the terms of a written agreement~~
29 ~~that he or she take possession of purchased goods within a specified~~
30 ~~period of time. A first violation of this subdivision is an infraction~~
31 ~~subject to a fine of one hundred dollars (\$100); and a second or~~
32 ~~subsequent violation is subject to a fine of two hundred fifty dollars~~
33 ~~(\$250).~~

34 (n) ~~When the auction sale involves a salvage certificate vehicle~~
35 ~~as defined in Section 11515 of the Vehicle Code and a resale~~
36 ~~certificate pursuant to Article 3 (commencing with Section 6091)~~
37 ~~of Chapter 2 of the Revenue and Taxation Code, the auctioneer or~~
38 ~~auction company shall provide the transaction records listed under~~
39 ~~subdivision (g) to the State Board of Equalization, unless the resale~~
40 ~~certificate is provided by any of the following:~~

1 ~~(1) A person who certifies he or she is licensed, registered,~~
2 ~~regulated, or certified under the Health and Safety Code or the~~
3 ~~Vehicle Code as a dealer or dismantler.~~

4 ~~(2) A person who certifies he or she is licensed, registered,~~
5 ~~regulated, or certified under the Business and Professions Code~~
6 ~~as an automotive repair dealer, or is qualified as a scrap metal~~
7 ~~processor as described in the Vehicle Code.~~

8 ~~(3) A person who certifies he or she is licensed, registered,~~
9 ~~regulated, or certified, or otherwise authorized by another state,~~
10 ~~country, or jurisdiction to do business as a dealer, dismantler,~~
11 ~~automotive repairer, or scrap metal processor.~~